

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.502 OF 2001
Cuttack this the 20th day of August/2003

Braja Mohan ... Applicant(s)

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Applicant(s)

-VERSUS-

Union of India & Others . Respondent(s)

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes

(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.502 OF 2001
Cuttack this the 20th day of August, 2003

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN

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Braja Mohan, 60 years,
S/o. Late Lokenath Behera,
Vill-Baragara, PO-Argul
PS-Jatni, Dist-Khurda -
working as Mate (Retd.)
Office of P.W.I., Khurda Road,
Khurda

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Applicant

By the Advocates

M/s. M.M.Basu,
D.K.Dey
R.R.Mohanty

VERSUS

1. Union of India represented by
General Manager, South Eastern Railway,
Garden Reach, Calcutta (W.B.)
2. Divisional Railway Manager,
South Eastern Railway,
Khurda Road, Dist-Khurda

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Respondents

By the Advocates

M/s. D.N.Mishra
S.K.Panda
S.Swain

O R D E R

MR. B.N.SOM VICE-CHAIRMAN: This Original Application under Section 19 of the A.T.Act, 1985 has been filed by Shri Braja Mohan (applicant) formerly Mate, S.E.(PW), Khurda, challenging the calculation of pension and other retiral benefits communicated to him vide Annexures-2 and 3 by the Respondents-Railways. In this application he has prayed for a direction to be issued to/Respondents the to settle his pensionary benefits within a stipulated period with reference to his original service records,

after giving him an opportunity of being heard.

2. The facts of the case are that the applicant, whose date of birth as recorded in the Service Book was 1.1.1940 was not ordered to retire with effect from 31.12.1997, when he completed 58 years of age. It was only in the year 2000, by issuing Office Order under Annexure-R/4 dated 15.6.2000, the competent authority notified his date of birth as 01.01.1940 instead of 11.05.1940 and vide Annexure-R/5 dated 1.12.2002 made him to retire on superannuation retrospectively, w.e.f. 31.12.1997. Thereafter, the Respondents-Railways have sanctioned him pension at the rate of Rs.1648/- per month, but did not pay him D.C.R.G., commutation value of pension against which he represented. On receipt of his representation the Respondents vide their letter dated 4.5.2001 (Annexure-4) informed him as follows.

" . Sub: Non-payment of Settlement dues:

Ref: Your representation dtd.05.04.2001:

In order to clear of this old pending case, it is to inform you that while considering the case for release of DCRG and commutation value of your settlement case, some irregularities have been detected. The same is under process to be complied with. Soon after the case is finalised, the same will be intimated to you".

The applicant has alleged that the Respondents have not fixed his pension correctly, i.e., he has not been granted 50% of the last pay drawn towards his pension, (the last pay being Rs.4110/-) and that the Respondents have unnecessarily withheld his DCRG and commutation value of pension. He has further alleged that he had declared his

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date of birth as 01.01.1940 when he entered service and it was none of his fault if he was not made to retire on attaining the age of superannuation on 31.12.1997.

3. The Respondents-Railways have contested the application by filing a counter. They have admitted that the applicant had declared his date of birth as 01.01.1940 and his age as 29 years when he joined service as Gangman on 28.07.1969. But due to wrong entry of date of birth in the service sheet as 11.05.1940 (Annexure-R/3), the applicant was allowed to continue in service and in the meanwhile the age of retirement was enhanced to 60 years coming in force w.e.f. 13.5.1998. Because of this wrong entry the applicant continued in service upto completion of 60 years of age(after completion of 58 years of age). In the year 2000 while the service sheet of the applicant was reviewed before final settlement, the discrepancy was detected and the matter was referred to the Chief Personnel Officer, (CPO) East Coast Railway, Bhubaneswar for a decision. The said authority, i.e., C.P.O. directed the appointing authority to correct the date of birth of the applicant as 01.01.1940 and to settle his retirement claims. Immediately thereafter by issuing letter dated 1.12.1997 (Annexure-R/5) the applicant was made to retire from service and his pension was calculated on the basis of pay that he had received upto 31.12.1997 and accordingly his pension was fixed at Rs.1648/- per month w.e.f. 1.1.1998 and the P.P.O. was issued on 21.3.2001. The Respondents have disclosed that this being a case of retention in railway service beyond the age of superannuation the matter was to be dealt as per the Railway Board's

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guidelines circulated under Establishment Sl. No.242/87 and 92/2000, by virtue of which the period of over stay in service is to be treated as irregular and the pay and allowances etc. allowed during the extended period have to be recovered. In the circumstances, they have calculated that the applicant had drawn Rs.1,69,762/- towards pay and allowances from 1.1.1998 till June, 2000, Rs.9719/- towards P.L.Bonus and excess payment of leave salary amounting to Rs.109/- (making a total of Rs.1,79,590/-) to be recovered from the applicant. Against this, they have stated that the applicant is entitled to Rs.62,489/- towards D.C.R.G. and thus, the applicant has to pay Rs.1,79,101/- to the Respondents-Railways. It is in these circumstances, the Respondents have stated that the D.C.R.G. amount has not been released. The Respondents have, however, submitted that they have already made payment of Rs.24,161/- towards Provident Fund and Rs.7131/- towards C.G.E.G.I.S.

4. I have heard Shri M.M.Basu, the learned counsel for the applicant and Shri D.N.Mishra, the learned Standing Counsel for the Railways. I have also perused the materials placed before me.

I have carefully considered the contentions of the rival parties. I have also gone through the list of citations submitted by the applicant in support of his contentions as well as the written note of arguments.

5. The contention of the applicant is that the Respondents are making illegal demand on him to refund an amount of Rs.1,79,590/- as he was allowed to stay in service beyond 31.12.1997. He submits that he is in no

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way responsible for remaining in service till June, 2000, because he had disclosed his date of birth as 01.01.1940 truly and correctly when he entered service and if his date of birth was recorded as 11.5.1940 on their own by the Respondents, how he could be penalized for that fault ? He also submits that he had actually worked/rendered service from 1.1.1998 to 31.5.2000 and therefore, under no stretch of imagination the Respondents could deny him wages for that period, as he is lawfully entitled to the same. It is the administration which should take stringent action against those staff and officers responsible for the lapse. But it would be unjust to inflict any financial burden on him, specially when he is a poor Khalasi, who could not have influenced the administration in any way to remain in service beyond the date of superannuation. It has also been pointed out by him that the recovery of pay and allowance for the period of his over-stay/as he has not been allowed any pensionary benefits during that period. In support of his contention he has referred to the following case laws.

- i) AIR 1994 SC 1474 (State of A.P. etc. v. S.K.Mohinuddin)
- ii) AIR 1999 SC 705 (Ramaswaroop Masawan v. Municipal Council & another)
- iii) 1989 (3) SLR 148 (Nanibala Mandal & ors. v. Union of India & Ors)

I have carefully gone through those case laws. I do not think that those case laws are of much help to the case of the applicant as the issues involved therein were different. In the case of S.K.Mohinuddin (supra), the matter concerns refixation of retiral age. In the case

of Ramaswaroop Masawan the issue involved was whether the benefit of a pension scheme introduced after his superannuation from service may be claimed by an employee on re-employment following superannuation. The answer was in the negative. Similarly, I do not find any application of the decision in the case of Nanibala Mandal to the instant case, being based altogether on different facts.

The point at issue is whether the decision of the Respondents-Railways to recover the pay and allowances already paid to the applicant during the period of his over stay in service w.e.f. 11.1.1998 till June, 2000 is legally valid or not. The Respondents have relied on their circular dated 18.2.2000 wherein detail instructions have been issued for preventing irregular retention of Rly.servants in service beyond the age of superannuation, including disciplinary action to be taken against those responsible for such a lapse and what treatment to be given to the excess period of stay. With regard to the treatment of excess period of stay, the circular reads as follows.

" In the light of the judgment of Supreme Court in the case of Radha Kishun v. Union of India and Others (SLP) (C) No.3721 of 1997 arising out of the judgment dated 26.11.96 of CAT/Patna O.A.652 of 1995). The matter had been considered by Minister of Rlys. Regarding treatment period of over stay taking in account Supreme Court views that an employee is to be considered equally responsible for his over stay in service, cordial position has been made vide Bds. Lrs. No.E(G) 97 RTL I dt.7.7.99 circulating advance slip No.44 in incorporating sub rule in Rule 1801-R-II 1987 edition in terms of which such period of over stay is to be treated as irregular and the pay/allowances etc. allowed for a period of a have to be recovered".

Thus the action taken by the Respondents-Railways is
in pursuance of the policy decision taken by them to overcome

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the menace of irregular retention in service after the age of superannuation. It would be also necessary to refer to the observations of their Lordships of the Apex Court in the case of Radha Kishan vs. Union of India with regard to entitlement of an employee to pay and allowances, who continued in service after retirement. In the aptness of things, some of the observations in this regard are quoted hereunder.

"... We are aghast to notice the boldness with which it is claimed that he is entitled to all the benefits with effect from the above said date when admittedly he was to retire on 31.5.1991".

... It is true that the petitioner worked during that period, but when he is not to continue to be in service as per law, he has no right to claim the salary etc. ... Under these circumstances, we do not find any illegality in the action taken by the authorities in refusing to grant the benefits".

With the above observations and direction of their Lordships, I think, the law in the matter of entitlement of an employee to pay and allowances for continuing in service after the date of superannuation is settled that no salary is payable and the authorities are within their rights to refuse to grant any benefit. In other words, in this case, the applicant is liable to refund the pay and allowances he had received for the period of his over-stay including those of the amounts received towards P.L.Bonus and excess leave salary encashment. Thus circular dated 18.2.2000 issued by the Respondents-Department is unassailable as it derives strength from the aforesaid judgment of the Apex Court.

However, there is a peculiar aspect of this case

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which calls for special attention. In this case it has been admitted by the Respondents-Department that the date of birth recorded in the service-sheet of the applicant as 11.05.1940 instead of 01.01.1940 was due to their mistake. It is also a fact that the applicant belongs to the category of Gangman, the lowest rung in the Rly. Administration. His submission that he could not have in any way influenced the administration to change his date of birth, is a credible one. But there is no assertion that applicant's re-employment could be construed as in public interest and therefore, he ~~can~~ not be allowed to enjoy the unintended benefits of the mistake committed by someone at some point of time, to eradicate the menance of administrative laxity and mischief. I, therefore, feel that as the administration was principally responsible for the lapse and the applicant was morally responsible as he knew that he had to retire at the age of 58 years and that he had attained the age of 58 years on 31.12.1997, the recovery of the amount of Rs.1,79,590 should be made from both the parties; i.e., the officers/officials under the Railways, who are responsible for mismanagement of the records by not following the instructions of verification of service records two years before the date of retirement of the employees concerned and the applicant, in the ratio of 65 : 35, in the interest of fairness and justice and to uphold the rule of law. It is also made clear that 65% (sixty-five percent) of the recoverable amount would be realised from the officials/officers at fault and 35%(thirty-five percent) from the applicant (limited to his D.C.R.G. money). No deduction should be made from the commutation value of his

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pension. Undoubtedly he should be paid pension with effect from 01.01.1998.

In the light of the observations and directions made above, this Original Application is disposed of. No costs.


(B.N. SOM)
VICE-CHAIRMAN

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